

AMENDED IN SENATE MAY 20, 2003

AMENDED IN SENATE MAY 6, 2003

AMENDED IN SENATE APRIL 22, 2003

AMENDED IN SENATE APRIL 3, 2003

SENATE BILL

No. 173

Introduced by Senator Dunn

February 12, 2003

An act to add Section 17206.7 to the Business and Professions Code, and to ~~add Section 391.1 to~~ amend Section 390.1 of, and to add Section 391.1 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 173, as amended, Dunn. Energy.

(1) *Existing law prohibits unfair competition, including any unlawful, unfair, or fraudulent business act or practices. In an action brought in the name of the people by the Attorney General or any district attorney, and in specified instances by a county counsel, city prosecutor, or city attorney, existing law provides that any person who engages, has engaged, or proposes to engage in unfair competition, is liable for a civil penalty not to exceed \$2,500 for each violation.*

This bill would provide that any person knowingly making a false statement or report for use in a gas index price, commits a fraudulent business act constituting unfair competition and is liable for a civil penalty not to exceed \$25,000 for each violation.

(2) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable

rates and charges. Existing law authorizes any nonutility power generator using renewable fuels that has entered into a contract with an electrical corporation prior to December 31, 2001, specifying fixed energy prices for 5 years of output to negotiate a contract for an additional 5 years of fixed energy payments upon expiration of the initial 5-year term, at a price to be determined by the commission.

This bill would instead authorize such an entity to elect an additional 5 years of fixed energy payments upon expiration of the initial 5-year term, at a price to be determined by the commission.

(3) Existing law provides for a short-run avoided cost methodology for the price paid by a public utility electrical corporation for electricity generated by a nonutility, qualifying small power production or qualifying cogeneration facility (QF), as defined. This methodology includes adjustments to prices based upon gas index prices.

This bill would restrict the commission to the use of gas price indexes determined by the commission to be reliable and verified, and meeting listed requirements, and would require the commission to establish standards for reliability and verification for gas price indexes used to establish or adjust prices paid to QFs by a public utility electrical corporation. The bill would also restrict the commission, if it establishes a price benchmark used to determine the reasonability of utility natural gas purchases for the purpose of determining a utility bonus payment, to the use of index prices that meet those listed requirements. The bill would further provide that if the commission determines that no reliable and verifiable gas price index exists meeting the standards adopted by the commission, the commission is required to establish and adjust the prices paid to QFs by a public utility electrical corporation in a manner that is just and reasonable, in the public interest, and without discrimination against nonutility generators, consistent with the requirements of the federal Public Utility Regulatory Policies Act of 1978.

~~(2) Existing law prohibits unfair competition, including any unlawful, unfair, or fraudulent business act or practices. In an action brought in the name of the people by the Attorney General or any district attorney, and in specified instances by a county counsel, city prosecutor, or city attorney, existing law provides that any person who engages, has engaged, or proposes to engage in unfair competition, is liable for a civil penalty not to exceed \$2,500 for each violation.~~

~~This bill would provide that any person knowingly making a false statement or report for use in a gas index price, commits a fraudulent~~

~~business act constituting unfair competition and is liable for a civil penalty not to exceed \$25,000 for each violation.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 17206.7 is added to the Business and*
2 *Professions Code, to read:*

3 17206.7. (a) *Knowingly making a false statement or report*
4 *for use in an energy price index is a fraudulent business act*
5 *constituting unfair competition.*

6 (b) *Notwithstanding the maximum civil penalty in Section*
7 *17206, any person who knowingly makes a false statement or*
8 *report for use in a gas price index pursuant to Section 390 of the*
9 *Public Utilities Code, shall be liable for a civil penalty not to*
10 *exceed twenty-five thousand dollars (\$25,000) for each violation.*

11 SEC. 2. *Section 390.1 of the Public Utilities Code is amended*
12 *to read:*

13 390.1. Any nonutility power generator using renewable fuels
14 that has entered into a contract with an electrical corporation prior
15 to December 31, 2001, specifying fixed energy prices for five
16 years of output may ~~negotiate a contract for~~ *elect* an additional five
17 years of fixed energy payments upon expiration of the initial
18 five-year term, at a price to be determined by the commission.

19 SEC. 3. Section 391.1 is added to the Public Utilities Code, to
20 read:

21 391.1. (a) Any gas price index used to establish or adjust
22 prices for electricity paid to a nonutility generator by a public
23 utility electrical corporation, pursuant to Section 390, must be
24 reliable and verified, as determined by the commission.

25 (b) The commission may determine that a gas price index is
26 reliable and verified only if the gas price index meets all of the
27 following characteristics:

28 (1) All transactions that comprise the gas price index price
29 calculations are transacted on an organized exchange subject to
30 regulation by the federal Commodity Futures Trading
31 Commission.

32 (2) The Commodity Futures Trading Commission requires the
33 organized exchange to maintain and enforce an internal auditing

1 mechanism and to maintain records of trading activity for the
2 transactions, so that a clear audit trail is possible.

3 (3) The Commodity Futures Trading Commission requires the
4 organized exchange to conduct market surveillance and trade
5 surveillance of transactions, with oversight by the Commodity
6 Futures Trading Commission, to prevent market manipulation and
7 other anticompetitive activity.

8 (4) The transactions that comprise the published index price are
9 reported to the organized exchange and time-stamped within one
10 minute of the transaction.

11 (5) The transactions reported to the organized exchange
12 include all of the following information:

13 (A) Price.

14 (B) Volume.

15 (C) Delivery point.

16 (D) Duration.

17 (E) Date and time of transaction.

18 (F) Whether the transaction is a purchase or a sale.

19 (G) Counterparty.

20 (c) If the commission establishes a gas price benchmark, based
21 on a single gas price index or a combination of gas indexes, and
22 this benchmark is used to determine the reasonableness of natural
23 gas purchases by a gas corporation for the purposes of determining
24 a gas corporation shareholder award, the commission may use
25 only gas index prices that meet the requirements of subdivision
26 (b).

27 (d) Notwithstanding Section 390, if the commission
28 determines that no reliable and verifiable gas price index exists
29 meeting the standards adopted pursuant to this section, the
30 commission shall establish and adjust the prices for electricity paid
31 to nonutility generators by a public utility electrical corporation in
32 a manner that is just and reasonable, in the public interest, and
33 without discrimination against nonutility generators, consistent
34 with the federal Public Utility Regulatory Policies Act of 1978
35 (Public Law 95-617), any amendments to that act, and the
36 regulations adopted under that act by the Federal Energy
37 Regulatory Commission.

38 ~~SEC. 2. Section 17206.7 is added to the Business and~~
39 ~~Professions Code, to read:~~

1 ~~17206.7. (a) Knowingly making a false statement or report~~
2 ~~for use in an energy price index is a fraudulent business act~~
3 ~~constituting unfair competition.~~

4 ~~(b) Notwithstanding the maximum civil penalty in Section~~
5 ~~17206, any person who knowingly makes a false statement or~~
6 ~~report for use in a gas price index pursuant to Section 390 of the~~
7 ~~Public Utilities Code, shall be liable for a civil penalty not to~~
8 ~~exceed twenty-five thousand dollars (\$25,000) for each violation.~~

9 ~~SEC. 3.—~~

10 *SEC. 4.* (a) Subdivision (a) of Section 17206.7 of the
11 Business and Professions Code does not constitute a change in, but
12 is declaratory of, existing law.

13 (b) It is the intention of the Legislature in adding subdivision
14 (b) of Section 17206.7 of the Business and Professions Code, to
15 change existing law by providing for civil penalties in an amount
16 higher than would be available pursuant to Section 17206.

